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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORLAND DIVISION

AMERICAN EVENTS, INC., an Oregon corporation, d.b.a. The Materials Show,

Case No. 3:22-cv-01649-YY

Plaintiff,

v.

RELX, INC., a Delaware corporation dba REED EXHIBITIONS and RX; RX GLOBAL, INC., a Delaware corporation; PERFORMANCE DAYS; STEPHEN MCCULLOUGH, an individual; and JOHN JOSEF, an individual.,

Defendants.

**PLAINTIFF'S MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT**

ORAL ARGUMENT REQUESTED

LR 7-1 CERTIFICATE OF CONFERENCE

In compliance with LR 7-1, counsel for Plaintiff made a good faith effort through email and telephone conferences to resolve the dispute presented by this motion. Defendants stated that they oppose this Motion for Leave to File Second Amended Complaint.

**PAGE 1 - PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT**

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MOTION

Pursuant to Fed. R. Civ. P. 15, Plaintiff seeks leave to file a Second Amended Complaint in substantially the form attached hereto as Exhibit A (the “Amendment” and the “Second Amended Complaint”). Plaintiff seeks to file the Amendment to add and make more specific common allegations of fact discovered after the filing of this case and through the course of formal discovery, and to add a claim for common law fraud based on Plaintiff’s receipt of substantial evidence in support of this claim. A highlighted form of Second Amended Complaint showing all revisions from the prior amended complaint filed October 19, 2022 is attached hereto as Exhibit B.

PROCEDURAL POSTURE

Plaintiff filed this case in the Multnomah County Circuit Court for the State of Oregon on October 11, 2022 (Case No. 22CV34842). Defendants filed a Notice of Removal on October 27, 2022. The parties filed their respective initial disclosures, entered into a stipulated protective order, and exchanged discovery requests. The parties have now completed substantial discovery (including document production, depositions and exchange of interrogatories) in advance of the fact discovery deadline currently set for December 1, 2023 under this Court’s October 5, 2023 Scheduling Order.

STANDARD

“Under Fed. R. Civ. P. (15)(a), the Court “should freely give leave [to amend] when justice so requires.’ “The propriety of a motion for leave to amend is generally determined by reference to several factors: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party.” *Hurn v. Ret. Fund Trust of Plumbing, Heating & Piping Indus.*, 648 F 2d 12, 1254 (9th Cir. 1981) “[T]his policy is to be applied with extreme liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F. 2d 1074 (9th Cir. 1990).

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Fed. R. Civ. P. 15(a) provides that leave to amend a pleading "shall be freely given when justice so requires." As stated by the United States Supreme Court, "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962). "[I]f the underlying facts or circumstances relied upon by a plaintiff may be a proper source of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*, 371 U.S. at 182. "The *Foman* factors include [1] undue delay, bad faith or dilatory motive on the part of the movant, [2] repeated failure to cure deficiencies by amendments previously allowed, [3] undue prejudice to the opposing party by virtue of allowance of the amendment, [and] [4] futility of amendment." *C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 985 n.5 (9th Cir. 2011).

"Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists **a presumption under Rule 15(a) in favor of granting leave to amend.**" *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (emphasis added). "This policy is 'to be applied with extreme liberality.'" *C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 985 (9th Cir. 2011), quoting *Eminence Capital* at 1048.

DISCUSSION

Plaintiff seeks to file the Second Amended Complaint in order to conform its allegations and claims to the facts of this case as recently and substantially augmented through formal discovery. No defendant will be unduly prejudiced by permitting Plaintiff to file the Amendment, and none of the *Foman* factors are present or significant here. Plaintiff has not shown any undue delay or bad faith, has not shown a repeated failure to cure deficiencies in prior amendments, and the proposed Amendment is not futile.

Plaintiff should be permitted to add its fraud claim as stated in the Second Amended Complaint. Defendant John Josef ("Josef") admitted in depositions that he knowingly misrepresented his identity and company affiliation to gain access to The Materials Show on behalf of his employer RELX and for the benefit of himself and the Functional Fabric Fair. *See*

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Declaration of Thomas R. Rask, III (“Rask Decl”), ¶ 7. Josef further admitted in depositions that RELX has engaged in a pattern of false and misleading behavior to gain access to competitors’ shows and improperly solicit their exhibitors, vendors, and/or other participants. Josef stated that RELX encouraged their employees to gain access to competitors’ trade shows, clients and information using such improper means. *Id.* RELX produced emails confirming that defendant Stephen McCullough willfully and deliberately chose to “send a spy” to the August 2022 Materials Show, and knowingly directed Josef to conceal his identity and true affiliation for the purpose of making highly-valued “direct contacts” with AEI’s exhibitors, vendors, and/or other participants. *See* Rask Decl., ¶ 8. As a result, RELX and each defendant absconded with and improperly gained highly prized commercial information about The Materials Show’s displays, marketing, logistics, operation, booths, setup, compilations of materials and industry data, as well as the “direct contacts” described above. *See* Rask Decl. ¶ 9. Therefore, facts established through the course of document production and witness testimony establish Plaintiff’s prima facie case for common law fraud against the Defendants, and therefore the requested amendment is not futile.

Adding and clarifying general allegations discovered through the course of the parties’ document production, depositions and interrogatories, and adding a sixth claim of relief for fraud based on newly discovered written evidence and statements made in depositions, will not cause any defendant undue prejudice. Granting this motion will not cause delay of any kind, and simply reflects Plaintiff’s effort to conform its pleadings to evidence.

There being no basis to overturn the presumption in favor of granting leave to amend, Plaintiff requests that this motion be granted.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully seeks leave of Court to file the Second Amended Complaint.

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DATED this 30th day of November, 2023.

KELL, ALTERMAN & RUNSTEIN, L.L.P.

BY s/ Thomas R. Rask, III

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CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT on the following recipients by electronic mail at the following addresses:

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DATED this 30th day of November, 2023.

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Of Attorneys for Plaintiff